

a claim for relief.³ Further, Plaintiff has not demonstrated that he is under imminent danger of serious physical injury; therefore, his Complaint must be dismissed without prejudice.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Complaint (Doc. No. 1) is **DISMISSED** pursuant to 29 U.S.C. § 1915(g); and
2. The Clerk is directed to send a copy of this Order to the *pro se* Plaintiff.

Signed: February 8, 2011



Robert J. Conrad, Jr.
Chief United States District Judge



Such dismissal counts as a strike for purposes of 28 U.S.C. § 1915(g). Pointer v. Wilkinson, 502 F.3d 369 (6th Cir. 2007) (holding that prisoner's complaint dismissed in part with prejudice for failure to state a claim and in part without prejudice for failure to exhaust qualified as a strike for § 1915(g) purposes); see also James v. Brinkley, 2010 WL 1307212 n.3 (E.D. Va. March 31, 2010) (counting case as a strike even though complaint partially dismissed without prejudice); cf Finley v. Doe, 2008 WL 2645472 (S.D.W.V. June 30, 2008) (same); contra Turley v. Gaetz, 625 F.3d 1005 (7th Cir. 2010) (holding that dismissal of an action, in part for failure to exhaust and in part as frivolous, malicious or for failure to state a claim does not constitute a strike for § 1915(g) purposes).

³On January 3, 2011, the Court dismissed another of Plaintiff's §1983 Complaints. See Eaker v. Burns, 3:10cv657 (W.D.N.C. Jan. 3, 2011) (Dismissed pursuant to 28 U.S.C. § 1915(g).).